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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Forbearance From Applying Provisions) WT Docket No. 98-100
of the Communications Act to Wireless)
Telecommunications Carriers)

REPLY COMMENTS OF NEXTEL COMMUNICATIONS, INC.

I. INTRODUCTION

Pursuant to the Notice Of Proposed Rulemaking ("NPRM") of the Federal Communications Commission ("Commission") in the above-captioned proceeding,^{1/} Nextel Communications, Inc. ("Nextel") respectfully submits these Reply Comments.

In the NPRM, the Commission requested comment on whether it should further forbear from imposing certain provisions of the Telephone Operators Consumer Services Improvement Act ("TOCSIA") on Commercial Mobile Radio Service ("CMRS") providers. Additionally, the Commission requested comment on the application of its forbearance authority to other rules and regulations applied to CMRS providers.

Nextel submits these Reply Comments to support those commenters seeking forbearance from TOCSIA requirements,^{2/} as well as the CPNI requirements that were recently imposed on wireless

^{1/} Memorandum Opinion and Order and Notice Of Proposed Rulemaking, FCC 98-134, released July 2, 1998.

^{2/} Comments of GTE at pp. 7-11.

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carriers.^{3/} Nextel also supports the comments filed by Comcast and BAMS, each of which oppose the Commission's continued practice of (a) imposing regulations on the wireless industry without considering or evaluating the specific impact of those regulations on wireless providers; and (b) attempting to regulate new entrant competitors in the same ways as it regulates incumbent, established carriers with significant market power. Until the Commission recognizes the operational, technical and competitive distinctions among various telecommunications industries, e.g., wireless and wireline, consumers will not realize the added benefits of inter-industry competition, as anticipated by Congress in the Telecommunications Act of 1996.

II.

The Commission Should Consider The Technical, Operational and Competitive Characteristics of Each Potentially Impacted Service When Proposing New Regulations

In its Comments, the American Mobile Telecommunications Association ("AMTA") stated that, in determining appropriate regulations for the wireless industry, the Commission should consider the differing technical and operational characteristics of the various wireless services.^{4/} Nextel supports the position of AMTA, and emphasizes that, just as there are differences among providers of wireless services, Nextel agrees with Comcast and BAMS

^{3/} Comments of Bell Atlantic Mobile Systems, Inc. ("BAMS") at p. 11; Comments of Comcast Cellular Communications, Inc. ("Comcast") at p. 14; Southwestern Bell Mobile Systems, Inc. and Pacific Bell Mobile Services at p. 3.

^{4/} Comments of AMTA at p. 22.

that there are significant differences in wireline and wireless telecommunications services that the Commission must consider when developing new regulations.^{5/} The Commission cannot merely rubber-stamp a one-size-fits-all regulatory scheme across the board without considering the consequences on various providers. For example, regulations initially adopted in a monopoly environment are not necessarily appropriate in a competitive environment. Unless the Commission carefully considers the impact of a particular regulation on the processes and operations of each type of carrier, considering the competitive environment in which that carrier is operating, it will impose unnecessary burdens and obligations on carriers that do not have a corresponding benefit for consumers.

Rules governing the use of CPNI are an example of the Commission's failure to consider the application of its rules and regulations on wireless carriers. Presumably assuming that wireless and wireline carriers would be impacted the same, the Commission merely imposed identical CPNI regulations on both industries, failing to recognize the anti-competitive, anti-consumer results the rules would have on the wireless industry. The Commission's CPNI rules simply are not applicable to the wireless marketplace. For example, wireless carriers depend on CPNI to market their existing services as well as new, advanced technologies, features and services that improve the efficiencies

^{5/} See Comments of Comcast at pp. 4-12; Comments of BAMS at pp. 6-8.

of telecommunications end-users. Wireless carriers, moreover, have been using this information for marketing purposes without any adverse impact on consumers. Eliminating wireless carriers' ability to use CPNI in a manner that has benefited consumers is not in the public interest and does not promote competition. On the contrary, forbearing from imposing CPNI requirements on wireless carriers would promote competition and better serve the needs of wireless customers.


In addition to forbearing from its CPNI rules and regulations, the Commission should forbear from imposing TOCSIA on wireless carriers. As a number of commenters have stated, TOCSIA was never intended to apply to the wireless marketplace. In the five years since Congress created the CMRS marketplace, no need for TOCSIA has been demonstrated in the wireless marketplace. Wireless carriers, now competing in a marketplace with up to five or six providers in a single geographic area, have no incentive to charge anything but competitive prices in order to attract consumers to their products and services. Additionally, as relatively new market entrants, most wireless providers must place a high priority on establishing positive consumer reputations to compete against other providers. There simply is no empirical evidence that application of TOCSIA to wireless providers is necessary to protect consumers or promote competition. Until such evidence is established, the Commission has no justification for merely boot-strapping wireless into this landline statutory obligation.

Wireless carriers present a legitimate opportunity to create competition with the local exchange incumbents; however, that competition has not materialized to date, and it may not ever materialize unless the Commission allows wireless carriers to operate in the competitive environment that has developed, without the added inefficiencies of unnecessary and ill-suited government regulations. The Commission, therefore, cannot simply treat wireline and wireless providers similarly when considering the implementation of new rules and regulations. Across-the-board, one-size-fits-all regulations are not in the public interest and will stifle potential competition among incumbent wireline carriers and new entrant wireless carriers.

III. CONCLUSION

For these reasons, Nextel respectfully requests that the Commission forbear from imposing CPNI and TOCSIA requirements on CMRS carriers, and requests that the Commission, in future proceedings, carefully consider the unique aspects of wireless carriers when proposing new regulations.

Respectfully submitted,

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